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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1788th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 October 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA
Later: Mr. AMOR

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GE.99-44853 (EXT)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Fourth periodic report of Morocco (CCPR/C/115/Add. 1; CCPR/C/67/L/MOR)

1. At the invitation of the Chairperson, Mr. Benjelloun-Touimi, Mr. Lididi, Mr. Belmahi, Mr. Belkouch and Mr. Majdi (Morocco) took places at the Committee table.

2. The CHAIRMAN welcomed the Moroccan delegation and invited it to introduce the fourth periodic report of Morocco.

3. Mr. BENJELLOUN-TOUIMI (Morocco) drew attention to the content of the introduction to the report (paras. 1 and 2), which had been confirmed by His Majesty King Mohammed VI in his speech from the throne of 30 July 1999. The Moroccan authorities' desire to promote human rights had been reflected in the amendment of the Constitution, the institution of a two - chamber Parliament and the election of a new Government presided over by Mr. Le Youssoufi, an opposition leader who had for a long time been active in Geneva in NGOs dealing with human rights. The Prime Minister had stated before Parliament, in April 1998, that the defence of human rights, as universally recognized, constituted one of the main activities of the Moroccan Government. In that connection, certain situations that were still unresolved would be fully dealt with, Moroccan laws would be harmonized with the international instruments to which the State was a party and the promotion of a human rights culture would be more dynamic. Thus, under the royal pardon of 1994, 424 political prisoners had been released and all persons who had chosen to live in exile had returned; and the Advisory Council on Human Rights had studied the cases of 48 people who considered that their rights had been infringed through not having benefited from that pardon. In 1998, His Majesty King Hassan II had given his approval for the release of a further 28 detainees, and the Advisory Council currently had before it the cases of 20 other detainees involved in criminal activities of a political nature. Furthermore, in order to give practical form to his desire to consolidate democracy and the rule of law, His Majesty King Mohammed VI had decided to grant the request by Mr. Serfaty to return to Morocco.

4. A democracy heedful of the rules of law must be based on transparency, equity and prompt justice. Thus, governmental action was giving priority to judicial reform, which would strengthen social cohesion.

5. On the question of conditions of detention, although prisons continued to be overcrowded, the situation had improved in many respects, notably with regard to health care. In addition, the prison service was taking care to avoid any negligence or abuse that might be harmful to detainees. Thus, since 1992, autopsies had been carried out on any person who died in custody in order to determine the causes of death and to punish any officials found to be at fault. At the request of the family of the deceased or an NGO, a second post-mortem could be ordered and members of human rights organizations could visit prisons to see conditions of detention for themselves. That openness towards civil society fell within the context of the humanization of conditions of detention and the diminution of custodial penalties.

6. Lastly, another essential area of governmental action was the dissemination of the human rights culture at all levels of the population, notably through training and educational activities.

7. The CHAIRPERSON thanked the Moroccan delegation for its introduction and invited it to reply to questions 1-13 of the list of issues (CCPR/C/67/L/MOR), which read:

"Right to self-determination (art.1)

1. In view of the State party's observations in paragraphs 30-31 of the report, please indicate what progress has been made in conducting the referendum of people in Western Sahara on the question of self-determination.

Constitutional and legal framework within which the Covenant is implemented (art. 2)

2. Since the State party is in control of the Western Sahara, how are the rights afforded by the Covenant enjoyed by the population in that region and what institutions exist to provide remedies for them in the case of any violation of rights?

3. Please provide examples of cases where individuals have appealed to the Court to apply provisions of the Covenant where laws are inconsistent with its provisions? Do the courts have power to override or invalidate such laws? (paras. 34 and 91).

4. What measures have been taken since the Committee's examination of Morocco's third periodic report in order to overcome judicial corruption, to further strengthen the independence of the judiciary from government direction and to achieve a clear separation of power?

5. Please provide information on education and training on the Covenant provided to government officials, schoolteachers, judges, lawyers and police officials.

Gender equality, protection of family, non-discrimination (arts. 3, 23, 26)

6. Please provide information on the current level of literacy of women and participation by women in education, employment and political life. What measures are adopted by the State party in order to increase the percentage of women participating in political life and in official positions?

7. What legal and protective measures are available to women to deal with domestic violence and abuse of women?

8. What steps have been taken to remove remaining discrimination against women under private and family law, including the different age of marriage, inheritance laws, *wilaya* or parental power (para. 219) and matrimonial guardianship, and to ensure *de facto* equality of rights in marriage and upon its dissolution.

9. What remedies are available to women in case of discrimination in employment or sexual harassment?

Right to life, treatment of prisoners and other detainees, liberty and security of the person, right to a fair trial (arts. 6, 7, 9, 10, 14)

10. Have the categories of crimes punishable by the death penalty been reduced since the consideration of the third periodic report? In view of the fact that no execution has taken place since 1993, does the State party contemplate ratifying the Second Optional Protocol?

11. What measures are being taken to resolve the remaining cases of disappearance and to investigate the way in which such "disappearances" occurred, including places of burial, and to identify and impose suitable sanctions on those responsible and to compensate the persons concerned or (if they are dead) their families?

12. Please indicate whether the presentation of an arrested person before the Crown Procurator after 48 hours of police custody and after 96 hours in cases affecting the security of the State is compatible with article 9, paragraph 3, of the Covenant. What measures are taken to guarantee the absence of ill-treatment of persons in police detention? (paras. 106–108)

13. What progress has been made to meet the United Nations Standard Minimum Rules for the Treatment of Prisoners? (para. 86). Please comment on the present conditions in penal establishments, including the extent of overcrowding (para. 87). Which authority decides on sanctions against prisoners and what appeal method or complaint procedure is available to prisoners?

Freedom of religion, expression, assembly and association (arts. 18, 19, 21, 22)

14. What impediments are placed upon the freedom to change one's religion and upon proselytism? Does the fact that Islam is the State religion result in inequality or discrimination for adherents of any other religion?

15. How are the laws described in paragraphs 152–156 of the report considered compatible with article 19, paragraph 3, especially the powers to seize and suspend publications? What remedies are available to persons affected by these laws?

16. How does the notification process described in paragraph 166 guarantee that meetings may be held lawfully and without restrictions? What action has been taken to prevent the violent disruption of public assemblies by security forces?

Rights of the child (art. 24)

17. What measures are being taken to eliminate child prostitution, child labour and child abuse?

The rights of persons belonging to minorities (art. 27)

18. What recognition is given to ethnic, religious, or linguistic minorities, including the Berbers and Tuareg, in order that persons belonging thereto may exercise their rights under article 27 of the Covenant (paras. 211 and 212)? Please give examples.

Dissemination of information about the Covenant (art. 2)

19. Please indicate the steps taken to disseminate information on the submission of the report and its consideration by the Committee. What action was taken to disseminate the Committee's concluding observations on Morocco's third periodic report?"

8. Mr. BENJELLOUN-TOUIMI (Morocco), replying to question 1, said that, having represented his country in the United Nations on the Western Sahara question from 1985 to 1993, he was fully conversant with the case history. The first important point to note was that Morocco had agreed that the referendum on the question of the self-determination of the population of Western Sahara should be fully organized and supervised by the United Nations. Morocco was in favour of such a referendum and was therefore cooperating with the United Nations in preparations for it, combining the defence of national interests with a desire for justice and equity. In those circumstances, the process of identification of persons entitled to vote in a referendum was slow, complex and delicate, and involved many aspects other than purely administrative measures, which accounted for the accumulated delays. In any event, it was important not to apply excessively restrictive criteria for the identification of electors and all Sahrawis must be able to take part in the referendum. In that connection, the commission appointed to identify electors had now published the results of its work. However, the identification of certain groups, whom it had been impossible to register

for various reasons, was continuing, and the process had entered a stage where appeals were being made by persons who were either not on the lists and wished to be included or were asking for certain names to be deleted. That stage was a delicate one and could be lengthy, but it could not be avoided lest the credibility of the referendum be jeopardized. Once it had been completed, the referendum campaign would be able to begin, under the supervision of the United Nations bodies responsible for the organization of the referendum.

9. Mr. BELMAHI (Morocco), replying to question 2, said that the inhabitants of the Sahara regions enjoyed all the rights and freedoms established by Moroccan legislation and the Covenant. By way of example, he mentioned the particularly dynamic form taken by solidarity in Western Sahara (273 associations, 4 local newspapers, an Amnesty International association, political parties and trade unions). The authorities practised neither discrimination nor inequality of treatment between the northern and southern regions of the country. Judicial remedies, free of charge, were open to all Moroccans who claimed to be victims of a violation of internal law or the Covenant in all areas. Free appeals were dealt with by the governmental human rights agency, and cases could also be brought before the Advisory Council on Human Rights and the other commissions specializing in that area.

10. Mr. LIDIDI (Morocco), replying to question 3 of the list, said that, in several cases, article 11 of the Covenant had been invoked with regard to enforcement by committal and the Moroccan courts had on several occasions affirmed the primacy of the Covenant over national legislation. Furthermore, in the context of the current Government's effort to bring Moroccan legislation into line with international standards, the Public Debt Recovery Bill, which had been adopted by one of the houses of Parliament, provided for only one kind of enforcement by committal, applicable solely as a last resort. The law currently in force in fact provided that that measure could be imposed directly after a warning. However, it forbade its imposition in a number of cases, namely if the total amount of debt was equal to or less than 8,000 dirhams, if the debtor was aged under 20 or over 60, if his or her incapacity was attested by the local authorities or if the debtor was a pregnant or nursing woman; in addition, enforcement by committal could not be applied simultaneously to the two spouses, even for different debts. The law also provided that applications for enforcement by committal should be submitted to the courts for assessment; the interim relief judge must reach a decision on any application of that kind within 30 days.

11. The Moroccan courts were not competent to override or repeal laws. Given that situation, and out of a desire to bring internal law into line with international human rights standards, the current Government had set up a ministerial committee whose work was coordinated by the Ministry for Human Rights and whose responsibility it was to examine all legislative and regulatory instruments in order to ascertain that they were consistent with human rights standards, to prepare instruments and mechanisms for the promotion and safeguarding of those rights, and to ensure that the international instruments to which Morocco was a party were as closely integrated as possible within internal law and properly linked to the values of Moroccan society.

12. The Moroccan judiciary were fully independent and ensured the application of the guarantees accorded to judges with regard to their advancement and discipline. Thus, in the decisions it had adopted in April 1998, the Supreme Council of the Judiciary had promoted 165 judges (out of 999) who had fulfilled the requisite conditions with regard to competence, supervisory capacity and ability to exercise responsibility. In addition, that Council had considered 61 cases involving judges under article 58 of the Statutes of the Judiciary (failure to perform duties, dishonourable or undignified conduct, impropriety) and had decided to dismiss 9 of them, to terminate the activity of 2, to temporarily withhold the salary of 13 for a period of one to six months, to defer the promotion of 1 and to issue a reprimand to a further 5.

13. In reply to question 10 of the list of issues, he said that the 195 people who had been sentenced to death had had their sentence commuted to rigorous imprisonment in 1994 and that, since the ratification of the Covenant in 1979, only three death sentences had been carried out. No woman sentenced to death had been executed since independence. In addition, Moroccan use of amnesty and pardon was very liberal, since

the King granted his pardon to persons under sentence of death almost systematically, on the occasion of national events or holidays. Generally speaking, the maintenance of capital punishment in Moroccan criminal law represented a deterrent rather than a desire to impose exemplary punishment.

14. As to question 11, cases of disappearance were dealt with by the Advisory Council on Human Rights, which enjoyed full independence and was broadly representative of civil society. With the assistance of the authorities, NGOs and families, the Council had cross-checked data originating from various sources and had finally accepted only 112 cases of disappearance broken down in the following manner: 13 missing persons were reported to be alive, 58 were reported to have died, and in the 41 other cases the identity of the missing person or the circumstances of his disappearance were unknown. The new cases of disappearance which had been raised after the deliberations of the Council were being duly filed and checked, and the Council remained available to pursue its investigations as needed. In addition, an independent arbitration commission had been set up in parallel with the Council, on instructions from His Majesty King Mohammed VI. That commission was responsible for determining compensation for material or moral damage to victims and rightful claimants of persons declared missing or persons arbitrarily detained. The commission was composed of three judges, four members of the Council, one representative of the Ministry of the Interior, one representative of the Ministry of Justice, and one Supreme Court judge, who served as presiding officer.

15. In reply to question 12, he stated that the Judicial Police could arrest a suspect only in the cases and in accordance with the procedures provided for by law, and that the police were required to immediately inform the family of the person thus detained. The custody must be reported, within 24 hours of the arrest, to the Crown Procurator and the Crown Procurator-General in order to enable them to ensure the legality of the action taken. The Code of Criminal Procedure provided that the detainee must be brought before the Crown Procurator within 48 hours of his arrest and, if the Procurator decided to keep him in custody, he was immediately brought before a court, within three days of his arrest at the latest.

16. With regard to measures to ensure that there was no ill-treatment of detainees during police custody, every person brought before a prosecutor or examining magistrate had the right to request a medical examination for the purpose of checking his state of health or placing on record any violence to which he had been subjected. The Code of Criminal Procedure further provided that the Crown Procurator or examining magistrate could call for a medical examination, or grant such a request from a person in custody, if he noted traces of violence justifying such an examination. Representatives of the public prosecutor's office regularly visited police and gendarmerie stations to verify the legality of custody orders. The Code also provided that an accused person must be informed of his right freely to choose a counsel and, if he did not designate one, the court appointed one ex officio. The counsel attended all stages of the proceedings, in particular cross-examinations. He could at all times have access to the case file and contact his client. It was accordingly apparent from the foregoing that the Code's provisions on custody were in no way at variance with the provisions of article 9, paragraph 3, of the Covenant and that, generally speaking, custody was a measure that was fully under the supervision of the judicial authorities.

17. In reply to question 13, he said that, since the consideration of Morocco's third periodic report (CCPR/C/76/Add. 3 and 4), the two chambers of Parliament had unanimously adopted a bill relating to the organization and operation of prisons, which was consistent with relevant international standards. The new law, which had entered into force on 16 September 1999, was also consistent with internationally-recognized principles such as non-discrimination in the treatment of prisoners, separation of the various categories of prisoners, and the right of prisoners to communicate with the outside world, and particularly their relatives, to work and to a fair wage, to obtain qualifications and to reintegration, to humane living conditions, to information, to the practice of worship, to cultural and artistic activities, and to special exit permits.

18. Mr. BELKOUCH (Morocco), replying to question 5 of the list of issues, emphasized that the authorities' desire for reform called for a change of attitudes in terms of both behaviour and culture. To that end, the Ministry for Human Rights and the Ministry of Education had instituted a broad human rights education and training programme, which had begun in 1998 with the revision of school textbooks, the training of teachers and officials, and the initiation of projects in conjunction with NGOs dealing with women's and children's questions. In order to respond to national needs for the training of magistrates, prison staff, officials and members of NGOs, a centre would be set up with the support of UNDP and the Office of the United Nations High Commissioner for Human Rights; training and education activities were due to begin in November 1999. The centre would be headed by an executive board composed of representatives of all the governmental departments concerned with human rights questions (Ministries of the Interior, Justice, Health, Education, etc.), NGOs, the bar, the Office of the United Nations High Commissioner for Human Rights and UNDP. In addition, lectures had been organized in order to create a greater awareness among members of the gendarmerie and the armed forces of developments in the area of human rights in Morocco, the international commitments which the country had undertaken and the new domestic political scene. In addition, two volumes containing all the human rights instruments ratified by Morocco had been published and should supplement the nationwide publicity campaign. For some years now, police journals had also reproduced the text of the instruments ratified by Morocco and had published articles aimed at making police officers more aware of the need to respect human rights commitments.

19. The Ministry for Human Rights had set up a support network for women and children in a difficult situation, with the support of the national bar and the European Union, and in consultation with national NGOs. The human rights publicity campaign would also be extended to the media; television and radio staff were to receive training in that area, which would be given with the participation of NGOs.

20. On the situation of women, he stated that the Constitution established equality between men and women. In the past two years women had been appointed as ministers, ambassadors, presiding judicial officers and members of the Constitutional Council. On the other hand, the statistics for women's participation in politics were hardly encouraging. Thus, at the most recent municipal elections, out of 22,000 candidates only 43 had been women, and of the 600 members of the two chambers of Parliament only four were women. Given that situation, the Government had prepared a national plan for the integration of women in development, which was aimed at encouraging the participation of women in national life, notably in the economic and political spheres. That plan, which was the subject of widespread debate in Morocco, was supported by civil society as a whole. Very recent statistics for illiteracy showed that 47 per cent of the population were illiterate. In that respect, Morocco remained a developing country, with limited financial resources. However, the education budget accounted for 24 per cent of the total national budget.

21. Mr. LIDIDI (Morocco) said that a committee had been set up to reform criminal law with a view to enhancing action to combat violence against women. Article 40 of the Penal Code explicitly prohibited violence in general, whether the victim was a woman or a man. Similarly, the law established penalties for rape, incitement to rape and any act jeopardizing the dignity of women.

22. Mr. BENJELLOUN-TOUIMI (Morocco) cited the example of the rules of inheritance in Morocco as a subject of controversy and debate in society at large. Several attempts had been made to amend the existing enactments, but traditional forces in society had resisted reform. The debate therefore remained open, and the Moroccan authorities were endeavouring to settle the matter in a democratic fashion.

23. The CHAIRPERSON thanked the Moroccan delegation for answering the first part of the list of the issues and invited Committee members to ask further questions orally.

24. Mr. ZAKHIA said that the report was still too general to enable the Committee to gain an objective idea of the human rights situation in Morocco. He wondered why there were no mechanisms to compel the courts to apply the Covenant and whether effective measures had been taken to compel the authorities to

enforce the law effectively. In that respect, he would welcome further details on the independence, competence and effectiveness of the Advisory Council on Human Rights.

25. The Code of Personal Status, which was based on the shariah, in his view contained discriminatory provisions which jeopardized the dignity of women, such discrimination also being apparent in the Penal Code. Did not the Penal Code provide that misconduct by a wife could lead to prosecution, even in the absence of a complaint by the husband? In his opinion, in order to establish legal equality between men and women, certain articles of the Penal Code should be amended. In addition, it would seem that, in terms of personal status, Moroccans were obliged to follow Muslim law or Judaic law, which meant that they had no freedom of choice. Thus, if a person was a Christian or had no religion, he was nevertheless required, against his will, to conform to a law which was not his. Those problems could be resolved by the adoption of a civil and optional personal status.

26. He noted that article 81 of the Constitution provided that Parliament could, at the request of one fourth of the deputies, bring before the Constitutional Council any dispute on the constitutionality of the law. In his view, that proportion of deputies seemed very high. Should it not be sufficient for a citizen to request that the law should be reformed if it was unconstitutional? Lastly, on the question of imprisonment for failure to fulfil a contractual obligation, the question which arose was not one of reducing the reasons for imprisonment. In that connection, the Covenant clearly stipulated that no one could be imprisoned for failure to meet a civil obligation, the objective being not to favour the rich at the expense of the poor.

27. Mr. Amor took the Chair.

28. Mr. KRETZMER noted that the report was very detailed on legislation, but did not give much information about its practical enforcement. Thus, on question of persons who had disappeared in Morocco and Western Sahara since the 1960s, the Advisory Council on Human Rights had apparently compiled a list of 112 names. According to the information available to the Committee, however, the Moroccan authorities were actually aware of the names of 500 missing persons who were not on the Council's list. He would like to know what action had been taken by the Moroccan authorities to inquire into those disappearances.

29. When Morocco had acceded to the Covenant, it had expressed no reservation and had undertaken to observe all the provisions of the Covenant, notably article 2, which provided that States parties undertook to respect all the rights of individuals, without distinction of any kind. In that connection, the Moroccan delegation had cited article 8 of the 1996 Constitution, but that article referred only to political rights, whereas the Covenant required respect for all the rights of individuals. Furthermore, in his view, manifest discrimination between men and women existed in Moroccan legislation. Admittedly, Morocco had the will to amend that legislation, but that was insufficient; the State party had a legal obligation to respect all aspects of the Covenant, notably with regard to family law and criminal law.

30. As to police conduct, he noted from paragraph 65 of the report that, in certain cases, officers who had committed abuses had been disciplined. However, the same paragraph also referred to unlawful violence, abuse of authority, and even attempted homicide, in other words, violations which constituted criminal offences. He would therefore like to know what criminal proceedings, and not just disciplinary proceedings, had been instituted against the perpetrators of such acts.

31. On the question of pre-trial detention, it would seem that the Crown Procurator enjoyed substantial powers. It was stated in paragraph 77 of the report that "pre-trial release may be ordered by the judge on the advice of the Crown Procurator". Did that mean that it was the latter who took the final decision and not the judge? In addition, it was stated in paragraph 76 that pre-trial detention "may not exceed one month, non-renewable", but he would like to know on what basis the court could decide that a person presumed to be innocent could be detained.

32. Ms. CHANET, said that, having participated in the consideration of Morocco's second and third periodic reports, she noted that there had been fresh developments. The report before the Committee, which dated from 1997, was to some extent outdated since it provided no means of assessing the human rights policies of King Mohammed VI.

33. In her opinion, the Constitution adopted in 1996 was vague. Admittedly, it did contain certain articles on fundamental rights, but there were not many of them. Thus, the rights guaranteed by the Covenant, notably the presumption of innocence, were not all established by the Constitution. And she considered that there was a lack of clarity concerning the transposition into the domestic legal system of international enactments, in particular the provisions of the Covenant.

34. On the question of custody, she would like the Moroccan delegation to state precisely at what point the lawyer intervened in criminal procedure; she noted in that connection that there were discrepancies between what was stated in paragraphs 10, 60 and 104 of the report. In fact, it would seem that the lawyer intervened only vis-à-vis the examining magistrate, and not from the outset of the proceedings, and would therefore not be present during custody. In addition, it was stated in paragraph 74 of the report that custody was limited to 48 hours, but that "These time limits are doubled in matters affecting State security". That provision seemed to be at variance with an Act of 1971, still in force, providing for an unlimited duration.

35. The Moroccan delegation had announced the reform of the judicial system and the statutes of the judiciary; she would like to have more information about that question because the description of the judicial system given in the report (paras. 72 78) contained gaps in relation to article 9 of the Covenant. She had in mind the role of the examining magistrate, since nothing was said about supervision of his activities. Was there a possibility of recourse against his orders to an indictment division? And how was that recourse exercised? Did the Crown Procurator have the same rights as the person concerned?

36. As to article 14 of the Covenant, it was stated in the report (para. 118) that the two-tier justice system was a principle established in the relevant instruments, and that was followed by a list of cases in which courts handed down decisions at first and final instance, in the absence of an appeal, namely in criminal cases and in the case of decisions by special courts. However, article 14 of the Covenant provided that the conviction and sentence should be considered twice, which did not seem to be the case in Morocco. Admittedly, application for judicial review was always possible (para. 119), but that did not constitute a two-tier system. Consequently, since Morocco had not expressed reservations to article 14 of the Covenant, she considered that there was non-compliance with article 14 and would like to know whether, in the context of the announced reform of criminal procedure, Morocco proposed to resolve that problem and in what way.

37. With regard to article 4 of the Covenant and states of emergency, which were not covered by the questions on the list of issues, she noted that article 35 of the new Constitution did not list, contrary to the requirements of article 4, the rights from which no derogation was possible. Must it therefore be concluded that article 4 was not respected? Or was there legislation other than the Constitution which did not authorize the derogations prohibited by the Covenant?

38. A perusal of the Committee's 1994 concluding observations clearly showed that Morocco still had a long way to go in the area of women's rights. She had been appalled to learn of the percentage of illiterate women. Admittedly, there was mention a movement towards equality between men and women, given that married women no longer needed their husband's authorization to apply for a passport or to be a wet nurse, but that progress was scanty in the light of the fact that there was still no equality between men and women with regard to the transmission of nationality, rights of inheritance and indeed divorce, or in any event separation. Those questions were apparently being debated in Morocco but, in her view, there could hardly be a debate on a principle, such as the principle of equality enunciated in article 3 of the Covenant. The commitment undertaken by the State party in acceding to the Covenant was strong and legislative measures should be taken in the context of the overall plan which had been referred to. Could the delegation clarify

the situation in that respect, and in particular the question of the amendment of the Code of Commerce relating to the right of married women to work without their husband's authorization?

39. The implementation of article 12 was dealt with very briefly in the report, even though it related to a crucial question in Morocco, that of the right of every person to enter his country. On that right the Covenant permitted no restriction. However, in the case of Abraham Serfaty, the family of Medhi Ben Barka and the Oufkir family, it was not very clear what legal rules covered either their exile or their return to Morocco. It would seem that the persons concerned had either been out of favour, or that they had come back into favour. She would like to know whether her analysis was correct.

40. Mr.YALDEN expressed his disappointment at certain lacunae in the report and the replies given by the delegation to the questions on the list of issues which had been sent to the Moroccan authorities. The agencies which the delegation had mentioned in connection with the promotion and observance of human rights were all of a governmental or advisory character. Noting that there was no institution independent of the Government which dealt with human rights, and in particular examined complaints by citizens, he asked whether the Moroccan authorities intended to set up an organ, mediator or commission which would deal with the rights of the individual and would be able to take effective action in order to remedy breaches of human rights. Was there an intention to set up a body to monitor the right of detainees, for example? Question 13 on the list of issues asked whether there were appeal methods or complaint procedures for prisoners, but it did not seem to have been answered.

41. The discrimination suffered by women had already been mentioned by Ms. Chanet and Mr. Zakhia. He for his part merely wished to emphasize that, despite the articles of the Constitution and Morocco's accession to the Covenant, Moroccan women continued to be victims of discrimination both in law and in practice. The few figures that had been provided showed, inter alia, a shocking and saddening illiteracy rate among Moroccan women. It was difficult to see how that situation could be compatible with what was stated in article 13 of the Constitution, namely that "all citizens have an equal right to education and employment" (report, para. 36). However, under article 26 of the Covenant, the Moroccan authorities had entered into certain commitments, for which unfortunately exceptions had been made in the case of women, as indicated in paragraph 210 of the report. Those derogations concerning the personal status of women and girls were apparently based on religious considerations. The Committee could only remind Morocco of the obligations it had undertaken in acceding to the Covenant.

42. Lastly, discrimination existed not only on grounds of sex, but could also be based on disability, race, political opinion or sexual proclivity. Nothing had been said about that subject in the replies given by the Moroccan delegation.

43. Mr. KLEIN paid tribute to the considerable progress made in recent years in Morocco in the area of human rights and expressed the hope that that trend would continue and strengthen. His first subject of concern related to the right of self-determination. It was comforting to know that Morocco accepted the referendum procedure as a means of expression of the people's will. But there was a great difference between the principle and its application, and the application of that principle had been awaited for many years. The time factor was decisive in questions involving human rights, and the time had come for Morocco to permit the expression of the right of self-determination by those who were calling for it.

44. Secondly, concerning the people of Western Sahara, he would like to know whether they had the same remedies and access to justice as the rest of the Moroccan population. In other words, were the judicial and administrative infrastructures the same in Western Sahara as in the rest of Morocco? If that was not the case, the proclaimed rights remained a dead letter.

45. Thirdly, he would like to know how the rights established by the Covenant were protected in Morocco. Under article 2 of the Covenant, States parties undertook to respect and guarantee those rights for

all individuals in their territory, without distinction of any kind; that could be done in different ways. Morocco had set forth certain rights in its Constitution, but a close examination showed that the Constitution did not coincide exactly with the requirements of the Covenant. Taking, for example, the rights listed in articles 9, 10 and 14, the Covenant provided that they could be restricted by law and stipulated the reasons for which that could be done, but that was not the case in the Constitution. Taking the example of freedom of thought, conscience and religion, which was protected by article 18 of the Covenant, according to the report (para. 140) those rights were expressed in different articles of the Constitution (arts. 9 and 6). But there again, he was not certain that the protection provided for in the Constitution corresponded exactly to that of article 18 of the Covenant. It was also true that the Covenant formed part of Moroccan law and that it even had precedence over any Moroccan laws that were in conflict with it, as stated in paragraph 91 in the report, but the Moroccan delegation had in fact stated that the courts did not have the power to ignore laws at variance with the Covenant. It therefore seemed that there was a discrepancy between the law and practice.

46. He had noted other discrepancies between the Covenant and Moroccan law: in paragraph 55 of the report, for example, on the question of custody, and in paragraph 74, concerning periods of custody, which were doubled in the case of matters affecting State security. Paragraph 141 stated that in Morocco freedom of worship was expressed through recognition of the free public exercise of worship only in the case of the monotheistic religions, which was in flagrant contradiction with article 18 of the Covenant and, the status of women was not consistent with the Covenant's provisions. Consequently, Morocco should undertake a thorough and complete examination of all its legislation in the light of the Covenant.

47. With regard to the justice system (report, paras. 118 and 119), he would like more information about the special courts - the Permanent Court of the Royal Armed Forces and the Special Court of Justice, and about the independence of the judges sitting in those courts. The question of disappearances had been mentioned very briefly by the Moroccan delegation in its statement. Associating himself with observations already made by other members of the Committee, he wished to add that, in his opinion, the inquiries to shed light on those cases of disappearance should not only be aimed at granting practical compensation to the victims. There was another need: the moral need to be recognized as a victim. By so far refusing to grant such recognition, Morocco had missed an opportunity to work towards pacification.

48. Mr. WIERUSZEWSKI said he too regretted that Morocco's fourth periodic report did not provide all the necessary information to enable the Committee to understand how the human rights provisions contained in legislation were effectively enforced. He was nevertheless favourably impressed by the progress achieved in that area by Morocco over the past five years since the consideration of the third periodic report, even though Morocco still had a lot to do in order to attain a minimum level of protection of human rights. He associated himself with the questions and observations formulated by Mr. Kretzmer and others, particularly about disappearances, discrimination in general and discrimination against women.

49. He was concerned about protection against torture in Morocco, since the crime of torture did not exist in the Moroccan Penal Code, even though the report stated that the prohibition of torture derived from article 10 of the Constitution (para. 53). Would the Moroccan Government consider it necessary to explicitly include the crime of torture in its legislation? It was true that the report gave statistics on disciplinary penalties imposed on police officers in 1993 (para. 65), but the Committee had no information about any judicial proceedings that might have been initiated against perpetrators of acts of torture, notably when they were members of the security or police forces. It was apparent from information available to him that impunity was the rule in that case: one victim of torture had had to wait 10 years (1988-1998) for his case to come to court. Could the Moroccan delegation give information about the length of judicial proceedings when the case related to acts of torture? Information would also be desirable on the number of cases in which victims had managed to obtain compensation. The Moroccan delegation had stated that torture victims could ask to be examined by a doctor. How many times had such a request been made and with what results? It would, in fact, seem that victims were reluctant to make that request because they feared the consequences.

50. Like Ms. Chanet and Mr. Kretzmer, he was concerned about the way in which Morocco interpreted the provisions of article 9, paragraph 3, of the Covenant concerning custody; on the expiry of the time limit, the person concerned must be released or brought before the procurator, whereas the Covenant spoke of a "judge or other officer authorized by law to exercise judicial power", which was not the same thing. Were there plans to amend those provisions and to enable the arrested person to be brought before a judge – an examining magistrate, for example? The fact that the duration of custody could be doubled in matters affecting State security (report, para. 74) raised the question who decided that State security was affected. If the police could do that, they then had the possibility of extending the period of custody without the authorization of the procurator and, in that case, the provisions of article 9, paragraph 3, would not be respected.

51. The right to a fair trial, protected in article 14, raised the question of the independence of the judiciary, which had already been mentioned on the occasion of the consideration of the third periodic report. Did Morocco intend to take other measures to strengthen that independence, which, according to various information sources, would be very problematic? What real guarantees existed to ensure that judges performed their duties independently?

52. The implementation of article 14 also involved the admissibility of evidence, notably testimony obtained under torture or following ill-treatment. However, there was no stipulation that that type of testimony would be dismissed since the interrogation records could be challenged only on the basis of forgery. In those circumstances, it was difficult to see how a person whose confession had been obtained under torture could defend himself in court. According to information available to him, Moroccan judges often dismissed allegations of confessions obtained under torture. He would therefore like to know what guarantees existed to ensure that confessions obtained under torture were not admitted by the court. That question was directly linked to the presumption of innocence, which was not expressly included in the Moroccan Code of Criminal Procedure, even though, according to the report (para. 103), that principle was clearly the basis of the new Code.

53. His final subject of concern relating to the implementation of article 14 was the practice, in criminal cases, whereby the accused must bear the cost of summonses and pay allowances to witnesses whom he wished to call (para. 113). That practice constituted a breach of article 14.

54. Mr. ANDO associated himself with the other members of the Committee who had mentioned the conciseness of the fourth periodic report and regretted the absence of specific data. He nevertheless drew attention to the punctuality with which the Moroccan Government had consistently fulfilled its reporting obligation, which augured well for dialogue with the Committee.

55. He associated himself with the concern expressed by other members of the Committee, particularly about the status of women, disappearances, judicial guarantees and the independence of judges. He wished to elaborate on the latter point because a careful perusal of Title VI of the Constitution gave the impression that the Constitutional Council, composed of six members designated by the King and six by Parliament, was not really a judicial body. The composition of the Supreme Council of the Judiciary, too, did not constitute a guarantee of the independence of the judiciary since its president was the King and its vice-president was the Minister of Justice, and it was composed of the Crown Procurator-General to the Supreme Court and the President of the First Division of the Supreme Court. The High Court of Justice, which was competent to try members of the Government for offences committed in the performance of their duties, was also composed of members elected from within the First Division (Constitution, art. 89). He would like to know whether a citizen could challenge the constitutionality of any law before a court or whether only the Constitutional Council was empowered to rule on a law's constitutionality. Admittedly, the information given in paragraphs 13, 14 and 118-122 of the report showed that the judicial system was functioning well in Morocco, but doubts remained about its independence because of the numerous constitutional provisions which seemed to limit that independence.

56. Ms. EVATT thanked the delegation for the supplementary information it had given and noted with pleasure a greater recognition of the need to considerably strengthen the protection of fundamental rights. In connection with the right of self-determination, she had been surprised to see that the authors of the report had not dealt with the question of Western Sahara in connection with article 1 of the Covenant. She asked whether a timetable had been drawn up for the determination of the rights of electors by the courts and what court was competent in that respect. She would also like to know whether there were restrictions on freedom to travel to and leave Western Sahara and, in connection with freedom of movement, whether the Oufkir family, who had been authorized to leave the country, had the right to return.

57. Regarding the place of the Covenant in internal law, she noted that, although its provisions formed an integral part of internal law (report, para. 34) and although the Supreme Court had repeatedly affirmed the precedence of an international treaty over internal law (para. 91), the delegation had stated that laws incompatible with the Covenant had not been automatically annulled. The question was particularly important in the area of equality before the law, because a number of laws clearly discriminated against women, whereas articles 2, 3 and 26 of the Covenant and article 5 of the Moroccan Constitution guaranteed equality. It would be interesting to know whether those provisions had been invoked in order to seek the repeal of laws that discriminated against women.

58. She associated herself with the concern expressed about disappearances and asked what had happened to the disappeared persons about whom it had been said that they were possibly prisoners of war held by the army. Were visits by the International Committee of the Red Cross possible? And had measures been taken to determine responsibilities and to bring to justice the persons presumed to have been responsible? The dreadful prison conditions were also disturbing and, although there was welcome news that provisions had been adopted to improve them, stress must be laid on the need to release the necessary means in order to bring that about.

59. The situation of women in Morocco was still disturbing. The very low figures for the participation of women in public life were particularly disgraceful because their causes were unacceptable: very low level of education and very high level of illiteracy. The announcement of plans to seek solutions to the problem was satisfactory, but nothing could be done quickly. Many provisions of family law still discriminated against women and although the authors of the report found that complete equality of rights was not fully attainable, it would be recalled that the aim of the Covenant was indeed complete equality. Regarding violence against women, the Committee had been informed of the criminal laws formulated in that area, but it was obvious that legislation alone was not sufficient and that special training programmes must be put in place for the police and law enforcement officers in order to inform them of situations involving family violence or marital rape. Specific education measures were particularly necessary since Moroccan law provided insufficient guarantees to protect women from violence; it admitted crimes of honour and provided for excuses for a man who murdered an adulterous wife, for example. Again regarding discrimination against women, it should be stated whether there were plans to take measures to end the exclusion of women from certain jobs and to ensure that female domestic servants were protected by labour legislation. Lastly, she would like to know whether the fact that abortion was illegal was a contributory factory in maternal mortality.

60. Mr. POCAR said he was pleased to welcome the Moroccan delegation and expressed his satisfaction at learning how much progress had been made in the protection of fundamental rights since the consideration of the second and third periodic reports, in which he had participated. Despite the particularly laudable efforts which the Government had been making and was continuing to make, problems remained. The first problem, which had already been mentioned on the occasion of the consideration of the third report, concerned the place of the Covenant in internal law. In order to illustrate the precedence of an international treaty over internal law, the authors of the report mentioned, in paragraph 91, two Supreme Court decisions whose substance should have been stated, since it was important to know whether the treaties whose precedence the Supreme Court had affirmed related to the rights of the individual or any other subject. In the

same paragraph of the report, mention was made of the preamble to the Constitution, which proclaimed that the Kingdom of Morocco "adheres to the principles, rights and obligations emanating from the charters" of international organizations, but it was impossible to know the real value of the preamble to the Constitution. As to the hierarchy of laws, clarification was also needed on articles 46 and 47 of the Constitution; the former provided for a legal reservation on certain subjects, which were covered by regulations if they were not covered by laws, while the latter provided for the possibility of amending regulatory provisions by decree. The consequences of such a provision should be made perfectly clear, particularly for the purposes of the exercise of fundamental rights. He associated himself with the concern expressed by the other members of the Committee about the proclamation of states of emergency, particularly in view of the very vague nature of article 48 of the Constitution, which simply stipulated that a state of siege could be proclaimed for 30 days. Clarification was therefore necessary in order to understand the scope of that article and of article 35 of the Constitution relating to states of emergency in general.

61. He endorsed all the questions about equality before the law. He wished to refer to the question of capital punishment, which had already aroused the Committee's concern when it had considered the third periodic report. In its concluding observations (A/50/40, para. 117) the Committee had already recommended that crimes punishable by the death penalty should be limited to the most serious crimes. Since the Committee had raised the question again, the delegation had replied that the problem had not arisen because in practice capital punishment had always been commuted. However, there was a difference between the possibility of passing a sentence of capital punishment for the most serious crimes and the application of the penalty, and the Covenant admitted the possibility of pronouncing capital punishment only for the "most serious crimes".

62. Mr. BHAGWATI welcomed the delegation and stressed how much progress had been made since the consideration of the previous report. He shared the grounds for concern expressed by the other members of the Committee. He noted that imprisonment for debt was still possible in Morocco (report, paras. 98 and 99), which was not compatible with article 11 of the Covenant. The place of the Covenant in internal law was still not clear, and he would like to know whether there had been cases in which a legal text had been declared unconstitutional because it violated the provisions of the Covenant. The absence of provisions prohibiting torture had already been mentioned by another member of the Committee and, according to Amnesty International, there were also no provisions prohibiting the admissibility as evidence of confessions or statements obtained under constraint. Were there plans to draft a text enabling confessions obtained following ill-treatment to be dismissed? Again in the area of ill-treatment, he would like to know how many cases of torture and death in detention had been brought to the Government's attention, whether measures had been taken and whether convictions had been handed down. As to the administration of justice, the Committee had learned that arrangements had been made to provide training for judges and lawyers, and it would be useful to know whether that training comprised a programme specifically devoted to human rights and rights guaranteed by the Covenant. Lastly, he had been disturbed to learn, from paragraph 118 of the report, that decisions handed down by special courts and decisions in criminal matters could not be appealed, which was incompatible with article 14, paragraph 5, of the Covenant.

63. Mr. SCHEININ also welcomed the delegation and endorsed all the questions and concerns expressed so far, particularly regarding the rights of women. The criminalization of abortion was disturbing, not only in the light of the provisions guaranteeing equality but also in relation to article 7, which prohibited inhuman or degrading treatment. The Committee's position was that the prohibition of abortion for a female victim of incest or rape was equivalent to degrading treatment. However, mothers, and often young girls, who had become pregnant after rape or incest were not only obliged to undergo a full pregnancy, but were also expelled from their family and stigmatized for the rest of their life. It therefore clearly seemed that the absolute prohibition of abortion was in that case a form of treatment covered by article 7. Also in connection with article 7, disappearances constituted genuinely inhuman treatment for relatives and, since the Ministry for Human Rights had stated that a number of persons on the disappeared list might be prisoners of war, the names of the persons thus held, and their place of detention, should be reported to the human rights

organizations, which would inform the families. Clarification on the imposition and execution of the death penalty was also necessary; the Committee needed to know precisely the number of cases in which the courts had pronounced that penalty since 1994 and how many persons were awaiting a decision on their request for pardon. Would the authorities be prepared to provide the human rights organizations with a list of persons sentenced to death?

64. Mr. HENKIN welcomed the Moroccan delegation and associated himself with all the questions and concerns which had been expressed. He emphasized that all the changes which the members of the Committee were calling for and which were assuredly essential would not enable genuine progress to be made unless there was a change in the social and cultural structures embodying inequalities and in political attitudes. The effort must therefore be geared to education in order to bring about a radical transformation; he hoped that the new regime would be guided solely by the rule of law.

65. The CHAIRPERSON said that the Committee would resume consideration of Morocco's fourth periodic report at its following meeting.

The meeting rose at 6 p.m.